

REMARKS

I. STATUS OF THE CLAIMS

Claims 1-37 are pending in the present application. In the Office Action mailed January 25, 2007, claims 16-19 and 21-37 were rejected. Claims 20, 38 and 39 were objected to. Claims 1-15 were allowed.

By this Amendment, claims 16, 26, and 32 are amended. No new matter is presented by the amendments.

II. INTERVIEW SUMMARY

The undersigned thanks Examiner Boles for his helpful comments and suggestions during the telephone interview conducted on June 6, 2007.

Pursuant to 37 C.F.R. § 1.133(b), the following description is submitted as a complete written statement of the reasons presented at the interview as warranting favorable action.

During the interview, Applicant's representative proposed amending claims 16 to read:

16. A ridge ventilation system comprising:

a plurality of ridge vent sections configured to be arranged end-to-end covering an open ridge of a roof;

each of said ridge vent sections having a laterally flexible central panel flanked by ventilation grids; and

a plurality of fasteners stowed on at least one of said ridge vent sections prior to arrangement of the ridge vent section on a roof to be used in fastening said ridge vent sections to a roof.

Applicant's representative proposed similar amendments to claims 26 and 32.

Examiner Boles conceded that the subject matter of the amendments, if given patentable weight, defined over US Pat. 5,458,538 to *Cashman*. Examiner Boles contended, however, that the added limitations amounted to functional language and therefore had no patentable weight. Applicant's representative countered that the added language described a structural aspect of the ridge vent sections – namely the arrangement of the stowed fasteners prior to installation on a roof - rather than an operation or function performed by the ridge vent sections. Applicant's representative asked Examiner Boles if he had any suggestions for limitations similar to the proposed amendments that would define over *Cashman*. Examiner Boles responded that limitations addressed to the two different states of the ridge vent sections (i.e., before and after installation) were functional and would not have patentable weight. No agreement was reached on amendments that would render the claims allowable.

III. CLAIM REJECTIONS UNDER 35 U.S.C. § 102(b)

Claims 16-19 and 21-37 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,817,506 to *Cashman*. Independent claims 16, 26, and 32, and thus all of their dependent claims, have been amended and are believed to define clearly over *Cashman*. Specifically, claim 16 now recites that the plurality of fasteners are *stowed* on at least one of the

ridge vent sections *prior to arrangement of the ridge vent sections on a roof*. The Examiner agreed during the telephone interview that this subject matter defines over *Cashman*. However, the Examiner stated that he considered the added clarifying language to be functional, and therefore without patentable weight. Applicant requests reconsideration of this position in view of the following discussion.

A functional limitation is an attempt to define something by what it does, rather than by what it is. *MPEP 2173.05(g)*. The limitation added to claim 16 in the present amendment does not fall into this category. First, the word “stowed” is used in the claim because it conveys to one of skill in the art the concept of being “stored for future use,” in accordance with the dictionary definition of the term “stowed.”¹ *Cashman* does not teach or suggest fasteners that are “stored for future use” on a ridge vent section. The nails in *Cashman* are already in use attaching a ridge vent section to the roof deck. Second, to clarify further, claim 16 has now been amended to recite that the fasteners are “stowed” (stored for future use) on the ridge vent section *prior to arrangement of the ridge vent section on a roof*. This is not a functional limitation as the Examiner has suggested. It does not attempt to define a ridge vent section by what it does. Rather, it recites the structural configuration of the ridge vent section as it exists prior to being installed on the ridge of a roof, i.e. with stowed nails aboard. There is no art that teaches a yet-to-be-installed ridge vent section where nails are stowed on the ridge vent section itself before it is installed. *Cashman* certainly does not teach such a thing. Since the Examiner has rightly indicated that this subject matter, if not functional, defines over the art, and since the claim amendment is in fact structural and not functional, Applicant submits that claim 16, as amended, and its dependent claims 17 – 25 are in condition for allowance.

¹ Merriam-Webster’s Collegiate Dictionary, Tenth Edition, 2002

Similarly, amended independent claim 26 now recites a plurality of fasteners carried by at least one of said ridge vent sections *prior to arrangement of the ridge vent on a roof* and independent claim 32, as now amended, recites a fastener stowed (stored for future use) on a ridge vent section *before said ridge vent section is installed on a roof*. This is substantially the same subject matter as is found in amended claim 16 discussed above. Again, it does not seek to define the ridge vent by what it does, and therefore is not functional. Instead, it defines the structural configuration of a pre-installed ridge vent having fasteners stowed or carried thereon. There is no art that teaches such a configuration.

Assuming, *arguendo*, that the added subject matter is functional, an assumption with which Applicant strongly disagrees, the question does not end there. The MPEP makes it clear at section 2173.05(g) that a functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. Here, the added language fairly conveys to an ordinarily skilled artisan a yet-to-be-installed ridge vent with pre-stowed nails on board for use in attaching the ridge vent to a roof. Nowhere does the art teach or suggest such a configuration, as the Examiner recognized during the telephone interview.

In view of the forgoing, claims 16 through 39 now include clear structural rather than functional limitations not taught or suggested by the art. Accordingly, claims 16 through 39 are believed to be in condition for allowance.

CONCLUSION

In view of the foregoing remarks, Applicant submits that the rejections of the claims as set forth in the non-final Office Action of January 25, 2007 have been addressed and overcome.

Applicant further submits that all claims are in condition for allowance and request that a Notice of Allowance be issued. If issues may be resolved through an Examiner's Amendment, or clarified in any manner, a call to the undersigned attorney at (404) 879-2443 is courteously solicited.

The Commissioner is hereby authorized to charge any fees due, or credit any overpayment, to Deposit Account No. **09-0528**.

Respectfully submitted,



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